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LETTER DATED 18 FEBRUARY 1993 FROM THE PERMANENT REPRESENTATIVE OF SWEDEN TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

I have the honour, on behalf of the Chairman-in-Office of the Conference on Security and Cooperation in Europe (CSCE), to forward the decision by the CSCE participating States meeting today in Vienna on the proposal for an International War Crimes Tribunal for the Former Yugoslavia by the Rapporteurs under the CSCE Moscow Human Dimension Mechanism to Bosnia and Herzegovina and Croatia.

I would like to refer to the decisions of the third meeting of the Council of Ministers of CSCE, held in Stockholm in December 1992, in particular the determination of the CSCE Foreign Ministers to see to it that those responsible for the massive and systematic violations of human rights and international humanitarian law in the territory of Bosnia and Herzegovina and other parts of the former Yugoslavia are brought to justice.

I would also like to emphasize the importance of rapid progress in this field and the determination of the CSCE participating States to encourage an acceleration in the work of the United Nations.

The CSCE participating States have not yet considered the contents of the proposal of the Rapporteurs. However, they consider it to be an important contribution to the ongoing work within the United Nations.

I enclose a copy of today's decision of the CSCE participating States in Vienna as well as a summary of the proposal and the table of contents and ask you to circulate them as a document of the Security Council.

(Signed) Peter OSVALD
Permanent Representative

Annex I

Decision of 18 February 1993

The representatives of the participating States meeting in Vienna,

Express their thanks to the Rapporteurs under the CSCE Moscow Human Dimension Mechanism to Bosnia and Herzegovina and Croatia for their proposals on making the principle of personal accountability effective,

Request the Chairman-in-Office immediately to make public the report by the Rapporteurs entitled "Proposal for an International War Crimes Tribunal for the Former Yugoslavia,

Request the Chairman-in-Office to transmit this report to the Secretary-General of the United Nations and to the President of the United Nations Security Council for urgent consideration,

Further request the Chairman-in-Office to continue her consultations on this issue with the United Nations, and

Decide that the CSCE will continue consideration of possible further action.

Annex II

PROPOSAL FOR AN INTERNATIONAL WAR CRIMES TRIBUNAL FOR THE FORMER YUGOSLAVIA

by

Rapporteurs (Corell - Türk - Thune)
under the CSCE Moscow Human Dimension Mechanism
to Bosnia and Herzegovina
and Croatia

9 February 1993

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Summary

1. On 28 September 1992 the Rapporteurs (Corell-Türk-Thune) under the CSCE Moscow Human Dimension Mechanism to Bosnia and Herzegovina and Croatia were given the mandate inter alia "to investigate reports of atrocities against unarmed civilians in Croatia and Bosnia, and to make recommendations as to the feasibility of attributing responsibility for such acts".

2. The Rapporteurs visited Croatia during the period of 30 September-5 October 1992. On 7 October 1992 they issued a report on this visit. One of the proposals contained in this report was that a Committee of Experts from interested States should be convened as soon as possible in order to prepare a draft treaty establishing an international ad hoc tribunal for certain crimes committed in the former Yugoslavia.

3. In view of the fact that the Rapporteurs had been unable to visit Bosnia and Herzegovina, on 24 November 1992 they offered to make an interim report on that State, analysing the relevant penal law, and to draft a convention establishing an international ad hoc tribunal to deal with war crimes and crimes against humanity committed in the former Yugoslavia. In a decision on 15 December 1992, the CSCE Council welcomed the offer of the Rapporteurs to refine their proposals on making the principle of personal accountability effective, including the possibility of the establishment of an ad hoc tribunal. The CSCE Council foresaw continuing consultations on the matter with the Commission of Experts established pursuant to Security Council resolution 780 (1992).

4. Having studied the question further and after consultations with the United Nations Expert Commission and contacts with, inter alia, representatives of the Rapporteur on the former Yugoslavia under the United Nations Commission on Human Rights, the International Conference on the former Yugoslavia and the Minister for Foreign Affairs of Bosnia and Herzegovina, the Rapporteurs decided to draw up the present report in spite of the fact that they were not able to visit Bosnia and Herzegovina.

5. The main part of the report consists of a proposal for an International War Crimes Tribunal for the former Yugoslavia. The purpose of this Tribunal is to try individuals accused of war crimes and crimes against humanity as defined in international law and the domestic criminal law provisions of the former Yugoslavia and determined in scope by the proposed Convention.

6. The law to be applied by the Tribunal consists of a number of provisions from the Penal Code of the Former Socialist Federative Republic of Yugoslavia. This law is still in force in the territory of the former Yugoslavia, either directly, or, as in the case of Bosnia and Herzegovina and Croatia, through reference with or without modifications. In accordance with the proposal, the Tribunal will have jurisdiction over war crimes and crimes

against humanity, as specified in the Convention, committed in the territory of the former Yugoslavia as from 1 January 1991.

7. The main features of the Tribunal are as follows.

8. The Tribunal consists of five bodies: the Court, the Procuracy, the secretariat, the Board on Clemency and the Standing Committee.

9. The responsibility for the administration of the Tribunal rests with the Standing Committee, which consists of representatives of States parties to the Convention. The Court has two instances to meet current obligations under international law concerning the right of appeal. The task of the first instance is to adjudicate cases in Chambers composed of three judges. The Court of Appeal shall adjudicate cases appealed from the first instance and shall sit in Chambers composed of five judges. The task of the Plenary Court is to decide mainly on administrative matters.

10. The Procuracy is independent in relation to the Court. It is obliged to indict the accused, if the findings in the criminal inquiry indicate that the case is reasonably founded in fact and law. The task of the secretariat is to serve the Tribunal with a particular responsibility for the Court.

11. The jurisdiction of the Tribunal is exclusive and compulsory in relation to States parties to the Convention in the territory of the former Yugoslavia. However, the draft Convention provides for the transfer of jurisdiction back to those States when they have the appropriate means to adjudicate effectively and fairly cases falling under the jurisdiction of the Tribunal.

12. The Court is competent to impose deprivation of liberty and fines. It may not pass sentence of capital punishment. Sentences are to be served in the territory of the former Yugoslavia under international supervision.

13. The draft Convention provides that victims can participate in the criminal proceedings. There is also a limited possibility for victims to claim restitution of property and compensation.

14. The text of the draft Convention should be supplemented by rules of the Tribunal, to be drawn up by the Plenary Court. These rules will, inter alia, provide for legal aid and defence counsel.

15. The costs of the Tribunal are to be distributed among the States parties to the Convention. However, the costs for the enforcement of judgements will rest with the State responsible for execution.

16. The report does not take a stand on the question in which forum the Convention should be negotiated. However, the draft is designed in order to facilitate action by the CSCE participating States or some of these States within the framework of the CSCE or any other appropriate framework.

17. The main conclusions of the Rapporteurs are:

(a) In view of the urgency of the situation in certain areas of the territory of the former Yugoslavia the adjudication of cases concerning war crimes and crimes against humanity should be dealt with by an ad hoc Tribunal (sect. 8.1);

(b) The Rapporteurs advise strongly against waiting for the work done on the project for the elaboration of a draft statute for an international criminal court entrusted to the International Law Commission (sect. 8.1);

(c) National law, interpreted in the light of the international commitments which underlie this legislation, forms a sufficient bases for adjudication (sect. 8.2);

(d) A general and well-structured method of information collection with a view to assisting prosecutors must be implemented as soon as possible (sect. 8.3);

(e) The costs for a Tribunal of the kind foreseen by the Rapporteurs will be marginal in comparison to the amounts spent on various other efforts necessary for the restoration of peace in the area (sect. 8.10);

(f) It is not only desirable but also feasible from a legal point of view to establish an international war crimes Tribunal for the former Yugoslavia. In view of this conclusion, the establishment of such a Tribunal is primarily a question of political will (sect. 10).